THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.16433 of 1995

Date: 25.01.2006

Between:

The Deputy Executive Engineer, Tirumala Tirupati Devasthanams, Nizamabad (Incharge Mancherial) and another.

… Petitioners.

And

The Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.16433 of 1995

ORAL ORDER:

This writ petition is filed challenging the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.No.172 of 1992 dated 9.12.1994.

Facts, to the extent necessary to this writ petition, are that the 2nd respondent was appointed as a casual Labour, during the period February 1988 to 13.9.1988.

Questioning his termination from service, the 2nd respondent filed W.P.No.5975 of 1989 and this Court by order dated 30.11.1990 held that since the question as to whether the 2nd respondent was appointed for construction work till it was inaugurated or not, whether he was appointed for a specific purpose i.e., till the construction work was over, etc were disputed questions of fact, the petitioner was not entitled for any relief under Article 226 of the Constitution of India and that his remedy was only to claim compensation under Section 25-FF of the Industrial Disputes Act.

Consequent upon dismissal of the writ petition, the 2nd respondent filed an application, before the Industrial Tribunal, under Section 2-A(2) of the Industrial Disputes Act. The petitioner herein was set ex parte. Before the Tribunal the 2nd respondent – workman examined himself as S.W.1. However, no documents were filed as exhibits. Since the petitioner herein was set ex parte, neither were any witnesses examined on its behalf nor were any documents marked as exhibits. The 2nd respondent deposed before the Tribunal that he had worked from 15.2.1986 to 13.9.1988 and was paid wages till the end of January, 1988 and that for rest of the period no wages were paid and that his services were orally terminated from 23.9.1989. He deposed that at the time of his termination he had worked for a period of 240 days. Since the petitioner herein had not cross-examined the 2nd respondent and his statement stood un-rebutted, the Tribunal passed an Award partly allowing the petition. The Tribunal, while directing that the 2nd respondent be appointed as casual labour and that he should be paid his wages/salary for the period from February, 1988 to 13.9.1988 at the rate he was being paid while he was in service or working, passed an award as under:

"a) Award shall come into force after thirty (30) days of the publication of the 'Notification' issued by the Government.

b) Within thirty (30) days of its publication, the petitioner should approach the respondent with a request to issue "order of appointment and posting" and payment of the salary for the period referred to above.

Note:- The request should be made in writing and the letter be sent in Regd. post Ack. Due manner only and in no other manner.

c) If he i.e., the petitioner does not act and does not approach the respondent in time and in the manner as stated above, the petition shall be deemed to have been dismissed and be need not be appointed.

d) the petitioner would be entitled to his salary and attendant benefits from the date of his actually reporting for duty, subsequent to the receipt of "order of appointment and posting"

Aggrieved thereby the present writ petition is filed. Before this court, Sri M.Adinarayana Raju, learned counsel for the petitioner, would submit that the petitioner was engaged for a specific period till construction of Kalyanamandapam at Mancherial was completed and that on completion of construction, since his services were no longer required, his services were terminated. Learned counsel would submit that the finding of the Tribunal that the 2nd respondent was not paid salary from February, 1988 to 13.9.1988 was erroneous and that he was paid wages as specified in paragraph (g) at page 7 of the affidavit filed in support of the writ petition much prior to the institution of the industrial dispute itself. Learned counsel would also submit that the 2nd respondent had not complied with the conditions imposed by the Tribunal, in its award, requiring him to make a request in writing that he be appointed and that the letter be sent by registered post with acknowledgement due within 30 days from the date of publication of the award in Gazettee. Learned counsel would submit while the award was notified on 31.3.1995, the 2nd respondent was required, in accordance with the award of the Tribunal, to submit his representation by registered post acknowledgement due on or before 30.4.1995 and since he had not chosen to do so, the award has worked itself out and the petitioner must be deemed to have been dismissed and he need not be appointed.

The question as to whether the 2nd respondent had complied with the conditions imposed in the award and as to whether the deeming clause in condition (c) therein would come in to force or not, is beyond the scope of the present writ petition, which is filed challenging the award. It is not as if the 2nd respondent has chosen to approach this court seeking implementation of the award of the Tribunal. In a writ petition, challenging the award of the Tribunal, questions as to whether the workman had fulfilled the conditions prescribed in the award are matters which do not call for examination.

Since the contention of Sri Adinarayana Raju, learned counsel for the petitioner, that salary fro the period from February, 1988 to 13.9.1988 was paid to the petitioner, stands un-controverted, the award of the Tribunal is required to be modified to the extent the petitioner was directed to be paid wages/salary for the said period.

The petitioner having chosen to remain ex parte and not having participated in the proceedings before the Tribunal is not entitled to place facts, for the first time before this Court, in proceedings under Article 226 of the Constitution of India. It is well settled that the jurisdiction of this Court, under Article 226 of the Constitution of India, is supervisory and not appellate. In a writ petition, challenging the award of theTribunal, the jurisdiction of this court is limited to examining as to whether the finding of the tribunal is based on the evidence on record or as to whether the findings are perverse and are based on no evidence. Since the statement of the 2nd respondent before the Tribunal that he had worked for 240 days remains un-controverted, the award of the Tribunal directing the 2nd respondent to be appointed as casual labour does not call for interference. Except to the extent indicated above, i.e., in so far as the Award directed payment of salary for the period from February, 1988 to 13.9.1988 is concerned, the award of the Tribunal is confirmed.

The writ petition is accordingly disposed of. No order as to costs.

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25-01-2006

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